

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EDWARD B. SANDERFORD, SR. and U.S. POSTAL SERVICE,
POST OFFICE, Raleigh, NC

*Docket No. 98-2329; Oral Argument Held November 21, 2000;
Issued February 27, 2001*

Appearances: *Reagan H. Weaver, Esq.*, for appellant; *Miriam D. Ozur, Esq.*,
for the Director, Office of Workers' Compensation Programs.

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant sustained a recurrence of total disability on or about July 17, 1991 due to his employment-related psychiatric condition.

This case has previously been on appeal before the Board. On November 8, 1985 appellant, then a 53-year-old motor vehicle operator, was involved in a motor vehicle accident while in the performance of duty. The Office of Workers' Compensation Programs accepted appellant's claim (A6-384180) for contusion of the left shoulder and rotator cuff tear, contusions to both knees, sprained metacarpophalangeal joint of the right thumb, lumbar strain and dysthymic reaction with depression. Appellant underwent surgery for his injured left shoulder on October 31, 1986. Additionally, the Office authorized surgery for appellant's injured right thumb, which was performed on July 21, 1987. Appellant returned to work in a limited-duty capacity on November 21, 1987. In addition to receiving wage-loss compensation for various periods of temporary total disability, appellant also received a schedule award for permanent partial impairment to his left arm, right hand and left leg. The award covered a period of 230 weeks beginning January 17, 1998 and continuing through June 16, 1992.

On October 2, 1990 appellant was involved in a second employment-related motor vehicle accident. The Office accepted this latter claim (A6-499036) for left knee contusion, neck sprain, right shoulder sprain, right wrist sprain and low back sprain. On January 18, 1991 appellant returned to his previous limited-duty assignment. The Office of Personnel Management subsequently granted appellant disability retirement and he ceased working on July 17, 1991.

Subsequent to his retirement and concurrent with the expiration of his schedule award in June 1992, appellant claimed a recurrence of total disability due to his employment-related

physical injuries. In a decision dated January 7, 1993, the Office denied appellant's claim for recurrence of disability. An Office hearing representative affirmed the January 7, 1993 denial of compensation by decision dated December 22, 1993. In a decision dated May 3, 1996, the Board affirmed the Office hearing representative's December 22, 1993 decision.¹

Thereafter, appellant requested reconsideration on two separate occasions. In both instances, the Office reviewed appellant's claim on the merits and denied modification of the prior decision. The Office issued its most recent merit decision on April 16, 1998. Appellant filed an appeal with the Board on July 13, 1998.²

The Board finds that appellant failed to establish that he sustained a recurrence of total disability on or about July 17, 1991 due to his employment-related psychiatric condition.

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position, or the medical evidence of record establishes that he can perform the light-duty position, the employee has the burden of establishing by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that he cannot perform such light duty. As part of this burden, the employee must show either a change in the nature and extent of the employment-related condition or a change in the nature and extent of the light-duty job requirements.³

As previously noted, this is the second time appellant's claim has been before the Board. Following the Board's May 3, 1996 affirmance of the Office's denial of compensation, appellant submitted additional medical evidence on reconsideration. Based upon this newly acquired evidence, appellant alleged that he sustained a recurrence of total disability on or about July 17, 1991 due to his employment-related psychiatric condition.

The Board finds that there is no evidence of a change in the nature and extent of the limited-duty job assignment appellant held at the time he retired in July 1991.⁴ Furthermore, appellant did not specifically allege that such a change occurred, thereby precipitating his voluntary retirement. Accordingly, appellant has not met his burden of proof with respect to demonstrating a change in the nature and extent of his light-duty job requirements.

¹ Docket No. 94-1247. The Board's May 3, 1996 decision is incorporated herein by reference.

² The record on appeal includes evidence that was not submitted to the Office prior to the issuance of its April 16, 1998 decision. Inasmuch as the Board's review is limited to the evidence in the case record that was before the Office at the time of its final decision, the Board cannot consider appellant's newly submitted evidence. 20 C.F.R. § 501.2(c).

³ *Mary A. Howard*, 45 ECAB 646 (1994); *Terry R. Hedman*, 38 ECAB 222 (1986).

⁴ Prior to his retirement, appellant accepted a permanent limited-duty assignment as a modified general clerk in the vehicle maintenance facility. While this position consisted primarily of record-keeping responsibilities and other clerical duties, appellant was also required to assist in the storage and issuance of tools, parts and supplies. Additionally, he was responsible for picking up parts and shuttling vehicles to various post offices and stations.

Appellant also failed to demonstrate a change in the nature and extent of his employment-related psychiatric condition. As previously indicated, the Office accepted the condition of dysthymic reaction with depression as a consequence of appellant's November 8, 1985 employment-related motor vehicle accident. On reconsideration, appellant submitted recent medical evidence from two physicians attesting to his inability to work due to a worsening of his employment-related depression.

In a report dated April 23, 1997, Dr. Thad J. Barringer, Jr., a Board-certified psychiatrist, explained that he initially examined appellant in June 1994, at which time he diagnosed "[m]ajor [d]epressive [e]pisode, single type, severe in nature." Dr. Barringer noted that prior to his 1994 diagnosis of major depressive episode, appellant had been diagnosed with employment-related dysthymic reaction in 1986. With respect to the issue of causal relationship, he explained that "[i]f one extrapolates a line between the two depressions, it is logical to conclude that [appellant's] depression reached a point in 1991 [where] he was no longer able to continue work." Accordingly, Dr. Barringer concluded that appellant's work-related dysthymic reaction had progressed to a major depressive episode that totally disabled him from performing his limited-duty job. Regarding appellant's current psychiatric status, he noted that while appellant had markedly improved, he "remains moderately depressed."

Dr. Barringer's April 23, 1997 opinion is based primarily on speculation. As he did not examine appellant prior to June 1994, Dr. Barringer was unable to reference any clinical findings that would support his assessment of disability in 1991. Furthermore, Dr. Barringer's report does not reflect an understanding of appellant's limited-duty assignment as a modified general clerk. Without referencing any of appellant's specific duties, Dr. Barringer merely concluded that appellant was unable to perform his "limited-duty job." Consequently, Dr. Barringer's April 23, 1997 report does not rise to the level of rationalized medical opinion evidence.⁵ The record also includes Dr. Barringer's subsequent treatment notes covering the period August 1997 through March 1998. However, this latter evidence also fails to establish a causal relationship between appellant's current psychiatric condition and his employment-related dysthymic reaction. Furthermore, Dr. Barringer's recent treatment notes do not specifically address the issue of disability.

Appellant also submitted a January 25, 1998 report from Dr. E. Brooks Wilkins, a Board-certified family practitioner, who concluded that appellant's depression rendered him totally disabled as of February 11, 1992. Dr. Wilkins indicated that he met with appellant on that day and prescribed Prozac because of a significant depression. Dr. Wilkins reported observations of considerable agitation, irascibility and impaired concentration. He also commented that appellant expressed a hopelessness that was more acute than he had previously heard. Dr. Wilkins stated that appellant's current depression was an outgrowth of the dysthymic reaction and depressive anxiety initially noted in 1986. He further explained that appellant's second motor vehicle accident in October 1990 contributed to the worsening of his depression. Dr. Wilkins concluded that while appellant may have periods when he seems more capable of coping successfully, his long-term prospects are not good and he will remain, even with

⁵ Victor J. Woodhams, 41 ECAB 345 (1989).

medication specifically for the depression, “unable to perform even the modified clerk duties he once was able to manage.”

Dr. Wilkins concluded that as of February 11, 1992 appellant was incapable of performing even the modified clerk position he held during the spring and early summer of 1991; however, he did not specifically address appellant’s job duties. Dr. Wilkins did not provide a well-rationalized opinion for his conclusion in 1998 for finding appellant disabled as of February 1992. Nor was his report clear as to the particular aspects of appellant’s prior duties he was presumably unable to perform. Absent a more detailed explanation for his opinion on disability, the Board finds that Dr. Wilkins’ January 25, 1998 opinion also fails to rise to the level of rationalized medical opinion evidence.⁶ Accordingly, the Office properly denied appellant’s claim for recurrence of total disability.

The April 16, 1998 decision of the Office of Workers’ Compensation Programs is hereby affirmed.

Dated, Washington, DC
February 27, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁶ *Id.*